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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

2:18-CR-00221-WFN-1

15 vs.

United States' Sentencing
Memorandum

16 GERALDINE MICHELLE NEWELL,

17 Defendant.
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Plaintiff, United States of America, by and through William D. Hyslop, United States Attorney for the Eastern District of Washington, and Patrick J. Cashman, Assistant United States Attorney for the Eastern District of Washington, submits the following sentencing memorandum:

I. Background

The Government requests an opportunity to file additional materials in response to any memorandum or factual assertions filed by the Defendant.

The Government relies on the summary of facts contained within the plea agreement. (ECF No. 40). The Government further relies on the facts contained within the United States Probation Office's ("USPO") Pre-Sentence Investigation Reports and Addendum ("PSIR"). (ECF No. 45). Additionally, the United States relies on the following facts to support arguments at sentencing.

1 On December 4, 2018, the Defendant was indicted by a grand jury sitting in the
2 Eastern District of Washington with two counts of Bank Fraud, in violation of 18
3 U.S.C. § 1344(2), and two counts of Filing a False Tax Return, in violation of 26
4 U.S.C. § 7206(1). On January 15, 2020, the Defendant entered a change of plea to
5 Count 3, Filing a False Tax Return, in violation of 26 U.S.C. § 7206(1). Pursuant to
6 the plea agreement, the United States agreed to dismiss at sentencing Counts 1, 2, and
7 4. However, by dismissing those offenses, the United States does not waive the
8 relevance of the Defendant's conduct for those offenses as it relates to sentencing.
9 USSG §1B1.3.

10 In approximately October 2014, the Defendant and the victim, Beverly
11 Bourgeois, entered into an agreement where Ms. Bourgeois agreed to pay the
12 Defendant \$360 per day for her daily care. Ms. Bourgeois care was necessitated by
13 the Ms. Bourgeois physical and mental condition as well as her home in Seattle,
14 Washington needed significant renovations. Additionally, Ms. Bourgeois agreed to
15 pay the Defendant \$250 per hour for the care, clean up, salvage, and sale of her house.

16 Noted by investigators during the course of this investigation, were numerous
17 checks drawn on Ms. Bourgeois' account that appeared to be fraudulent. Specifically,
18 the Defendant, acting as the power-of-attorney (POA) for Ms. Bourgeois drafted
19 check number 2178, dated February 17, 2015 on Ms. Bourgeois' JP Morgan Chase
20 checking account. This check was in the amount of \$38,491.71 and was paid to the
21 order of Center4Law. Referenced in the memo section of the check was a note stating
22 the check was reimbursement for the cost of asbestos removal. However, when
23 investigators reviewed the invoices related to the reconstruction of Ms. Bourgeois'
24 home the asbestos removal cost was \$4,410.00 and was already factored into the total
25 cost of the rebuild conducted by Elite Installers NW, LLC, who subcontracted with
26 American Environmental Construction, LLC. Further review of the invoicing records
27 revealed the Defendant paid the entire cost of the Elite Installers invoice, which
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1 included the cost of the asbestos removal, in the amount of \$32,448.18 on November
2 21, 2014 using Ms. Bourgeois' JP Morgan Chase account.

3 Additionally, the Defendant drafted check number 2183, dated October 1, 2015,
4 from Ms. Bourgeois' JP Morgan Chase account in the amount of \$22,500. Again this
5 check was paid to the order of Center4Law for the purpose of payment for the Deposit
6 for Designs. Investigators determined that Atelier Drome was an architecture firm
7 hired to draft designs for the remodel of Ms. Bourgeois' home. Invoicing from Atelier
8 Drome reflected a cost of \$15,561, which was paid directly from Ms. Bourgeois' JP
9 Morgan Chase account through multiple payments on December 2014 and September
10 2015.

11 II. Base Offense Level and Enhancements

12 The Government agrees that the base offense level for Filing a False Tax
13 Return, pursuant to 26 U.S.C. § 7206(1), is 18. *See* USSG §2T1.1(a)(1). The United
14 States further agrees the Defendant failed to report or correctly identify the source of
15 income exceeding \$10,000 in any year from criminal activity results in a two-level
16 increase. *See* USSG §2T1.1(b)(1). The evidence supporting this increase relates to
17 check numbers 2178 and 2183, wherein the Defendant derived income from Ms.
18 Bourgeois' account through fraud and the use of her position as a POA. *See* USSG
19 §1B1.3(a)(1)(A).

20 The United States further agrees the vulnerable victim enhancement applies
21 because of the nature of Ms. Bourgeois physical and mental conditions. *See* USSG
22 §3A1.1; *see also* USSG §1B1.3.

23 The United States submits that an additional two-level increase applies because
24 the Defendant abused her position of trust as a POA to facilitate the commission of the
25 offense. *See* USSG §3B1.3. The United States disagrees with the Defendant's
26 analysis of the application of this adjustment. The United States does not maintain the
27 position the Defendant used her "special skill" as an attorney to facilitate the offense.
28 Rather, the United States argues the Defendant through her position as a POA, a

1 position of trust, embezzled money from Ms. Bourgeois' account to the account of
2 Center4Law. This resulted in income for Center4Law that was not properly reported
3 in the Defendant's tax return. But for the Defendant's position as the POA, she would
4 not have been able to unjustly enrich Center4Law and herself. As noted by the USSG,
5 adjustments in Chapter Three "shall be determined on the basis of...all acts and
6 omissions committed, aided, abetted, counseled, commanded, induced, procured, or
7 willfully caused by the defendant." *See* USSG §1B1.3 (Relevant Conduct). The
8 nature and means by which the Defendant obtained the funds from Ms. Bourgeois is
9 directly relevant to the commission of this offense. Accordingly, when considering
10 the relevant conduct, an abuse of a position of trust adjustment should apply.

11 The Government agrees that the offense level should be decreased by 3 levels
12 for the Defendant's timely acceptance of responsibility.

13 The Defendant therefore has a total adjusted offense level of 21. The Criminal
14 History Category as calculated by the USPO, which the United States agrees, is I.
15 Therefore, the Government calculates the Defendant has an advisory guideline
16 sentencing range of thirty-six (36) months, limited by the statutory maximum term of
17 imprisonment for violations of 26 U.S.C. §7206(1). Accordingly, the Government
18 recommends a sentence of 36 months, followed by an agreed to one (1) year term of
19 supervised release.

20 III. Departures

21 The Government does not seek an upward departure from the Advisory
22 Guideline range.

23 The Government intends to object to any requested departure or variance
24 offered by the Defendant.

25 IV. 18 U.S.C. § 3553(a) Factors

26 The Government respectfully submits that a total term of 36 months
27 incarceration, followed by a 1-year term of supervised release, would be a
28 "reasonable" sentence under the facts and circumstances of this case and would not be

1 greater than necessary to promote the purpose and policy of the Federal Sentencing
2 Act, 18 U.S.C. § 3553(a).

3 *a. A Sentence of 36 months accurately reflects the nature and*
4 *circumstances.*

5 While this offense does not involve physical harm to individuals, the
6 Defendant's actions involved the taking of money from Ms. Bourgeois and failing to
7 accurately report that taking on the Defendant's tax returns. By using her position as a
8 POA, the Defendant exploited her access to Ms. Bourgeois' financial accounts to her
9 benefit. She placed herself in a position in which she was able to purchase both real
10 and personal property. She placed herself in a position to leave the practice of law
11 and start a new business. She placed herself in a position where she shared the things
12 purchased and the trips taken with her family and provided for her adult children.¹
13 This was possible because of the Defendant's position of trust she maintained over
14 Ms. Bourgeois' finances.

15 While the Defendant takes the position that she did not unlawfully obtain
16 money from Ms. Bourgeois' accounts, the facts reveal otherwise. The Defendant
17 purportedly wrote checks to Center4Law for reimbursement of the costs associated
18 with asbestos removal and the design of Ms. Bourgeois' home. Yet a closer
19 inspection of the invoices and Ms. Bourgeois' checking account reveals that those
20 expenses had already been paid from Ms. Bourgeois' account. Therefore, there would
21 be no need for reimbursement to the Defendant.

22 The Defendant argues that the amounts in these two checks relate to the "time
23 expended on that issue." ECF No. 46, pg. 5, ln. 2. The United States strongly
24 disagrees with this argument. Assuming *arguendo* that the checks were written for
25 reimbursement of time and not costs pertaining to the remodel, at a rate of \$250 per
26 hour, the Defendant would have spent approximately 220 hours (5.5 weeks at 40
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28 ¹ The United States notes that Ms. Bourgeois would travel with the Defendant as well.

1 hours per week) communicating with contractors responsible for the asbestos
2 abatement and the design of the new home. This is utterly unreasonable and
3 inconsistent with the facts of this case. The nature of the Defendant's exploitation in
4 this case warrants a sentence at the low-end of the advisory guideline, which the
5 United States calculates as 36 months.

6 *b. A sentence of 36 months appropriately captures the characteristics and*
7 *criminal history of the Defendant.*

8 The Defendant is a Criminal History Category I. The Defendant has no
9 criminal history. However, the Court is not presented with an individual of limited
10 means or education. The Defendant holds a law degree from Gonzaga University and
11 has been engaged in the practice of law since October 1999. Notably in
12 approximately 2016, the Defendant left the practice of law to open a new food-service
13 business Crack of Dawn, LLC. The Defendant is of sophisticated means and is well
14 equipped to know her roles and responsibilities as a POA and her obligations to
15 accurately report her income to the Internal Revenue Service (IRS).

16 *c. A sentence of 36 months reflects the seriousness of the offense, promotes*
17 *respect for the law, and provides adequate punishment.*

18 Including relevant conduct, both the United States and Ms. Bourgeois have
19 suffered significant harm. Specifically, the United States has been harmed due to the
20 loss of tax revenue in the amount of \$264,909 owed. Furthermore, the Defendant
21 fraudulently procured funds from Ms. Bourgeois' accounts of at least over \$50,000.

22 A sentence of 36 months is appropriate to promote respect for the law. A
23 sentence of 36 months would represent a significant sentence to the Defendant who
24 has not previously served a prison sentence.

25 In drafting the Sentencing Guidelines, the Commission included a background
26 statement with respect to USSG §2T1.1, which states: "Tax offenses, in and of
27 themselves, are serious offenses; however, a greater tax loss is obviously more
28 harmful to the treasury and more serious than a small one with otherwise similar

1 characteristics. Furthermore, as the potential benefit from the offense increases, the
 2 sanction necessary to deter also increases.” USSG §2T1.1 cmt. background (2018).
 3 As reflected in the Sentencing Commission’s statement, with a higher tax loss, the
 4 sentence imposed must be greater in order to achieve an appropriate deterrent effect.
 5 The large tax loss caused by Defendant’s repeated intentional and willful decisions is
 6 another reason the Court should impose a guideline sentence of 36 months
 7 incarceration.

8 *d. A sentence of 36 months is necessary to deter the defendant and others*
 9 *from criminal conduct, and the need to protect the public from future*
 10 *crimes of the defendant.*

11 A primary goal of sentencing is to provide deterrence, in order that others will
 12 be less likely to commit tax crimes. This case presents the Court with an opportunity
 13 to deter the general public and the Defendant from committing tax fraud. General
 14 deterrence is one of the prescribed goals of every sentencing, but it occupies an
 15 especially important role in sentencing for criminal tax offenses, because criminal tax
 16 prosecutions are relatively rare:

17 The criminal tax laws are designed to protect the public interest in
 18 preserving the integrity of the nation’s tax system. Criminal tax
 19 prosecutions serve to punish the violator and promote respect for the
 20 tax laws. Because of the limited number of criminal tax prosecutions
 21 relative to the estimate incidence of such violations, deterring others
 22 from violating the tax laws is a primary consideration underlying
 these guidelines. Recognition that the sentence for a criminal tax case
 will be commensurate with the gravity of the offense should act as a
 deterrent to would-be violators.

23 *United States v. Engle*, 592 F.3d 495, 501-02 (4th Cir. 2010) (*quoting* USSG Pt. T,
 24 introductory cmt. (1998)). “The policy statements likewise make it clear that the
 25 Commission believes that there must be a real risk of actual incarceration for the
 26 Guidelines to have a significant deterrent effect in tax evasion cases.” *Engle*, 592
 27 F.3d, at 502. Moreover, general deterrence depends upon the public seeing some
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1 consequence for criminal conduct. Thus, taxpayers who exploit their positions of trust
2 and willfully evade their income tax obligations must realize that such behavior
3 carries with it a correspondingly serious punishment. Here, a guideline sentence of 36
4 months can act as a general deterrent to others who might consider engaging in similar
5 criminal conduct.

6 Deterrence is particularly crucial in a case such as this where the Defendant, an
7 lawyer, savvy in the law and business, willfully violated the tax laws by concealing
8 her procured income, both legitimate and fraudulent.² “Defendants in white collar
9 [cases] often calculate the financial gain and risk of loss, and white collar crime
10 therefore can be affected and reduced with serious punishment.” *United States v.*
11 *Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006). It is this type of mentality that is most
12 amenable to deterrence.

13 Absent such deterrence, other successful Americans with the means and
14 opportunity to enrich themselves at the cost of other taxpayers, will cynically
15 conclude that the potential rewards of such criminal activity outweigh the risks of
16 being caught and punished for committing tax fraud. *See United States v. Ture*, 450
17 F.3d 352, 358 (8th Cir. 2006) (“The goal of deterrence rings hollow if a prison
18 sentence is not imposed.”). The sentence imposed in this case should send a strong
19 message to other would-be tax violators that imprisonment is a reality for those who
20 willfully violate the internal revenue laws. The sentence should also assure law-

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22 ² *See, e.g., United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (“Because
23 economic and fraud-based crimes are more rational, cool, and calculated than sudden
24 crimes of passion or opportunity, these crime are prime candidates for general
25 deterrence.” (internal quotation marks and alteration omitted)); *United States v.*
26 *Hauptman*, 111 F.3d 48, 52 (7th Cir. 1997) (“[White collar] crime is not as feared as
27 violent crime or drug offenses, but like the latter it requires heavy sentences to deter
28 because it is potentially very lucrative.”).

1 abiding taxpayers that they are not credulous rubes for filing tax returns and paying
2 their share of taxes. In short, our nation's tax system depends on the voluntary
3 compliance of honest taxpayers. Here, a sentence of imprisonment promotes
4 voluntary compliance by making clear that there are consequences for hiding income
5 from the government. The recommended guideline sentence will certainly deter
6 others and send a message that cheating on your taxes bears very serious
7 consequences, and simply will not be tolerated.

8 Another important goal is to protect the public "from further crimes of the
9 defendant." 18 U.S.C. § 3553(a)(2). As articulated in the dissenting opinion of
10 Circuit Judges Gould, Bybee, Callahan and Bee:

11 It doesn't take a crystal ball to see that those occasional dishonest
12 persons in the business community may make a slide-rule calculation
13 that they can steal hundreds of thousands of dollars, maybe even
14 millions, because if caught they see a good chance that they can walk
15 away with expressed contrition and probation. That is the result the
16 Sentencing Guidelines have long worked to prevent. *See* U.S.S.G.
17 Ch. 1, Pt. A.4(d) (2009) ("Under pre-guidelines sentencing practice,
18 courts sentenced to probation an inappropriately high percentage of
19 offenders guilty of certain economic crimes, such as theft, tax
20 evasion, antitrust offenses, insider trading, fraud, and embezzlement
21")

22 *United States v. Edwards*, 622 F.3d 1215, 1218 (9th Cir. 2010) (Gould, J.,
23 dissenting).

24 A sentence of 36 months will send a clear message to the Defendant that future
25 violations will not be tolerated. As a lawyer, the Defendant is expected to abide by
26 the highest standards of integrity and ethics. The Defendant deviated significantly
27 from the oath she took as a lawyer. A sentence of 36 months is an appropriate
28 sentence that reflects the gravity of her offense and the significant breach of trust
caused by the Defendant.

e. Need to provide educational or vocational training, medical care or other correctional treatment

The Defendant hold a law degree and has previously practiced law since October 1999. It appears the Defendant may have a gambling issue, which the Defendant explicitly denies, and potential mental health issues that could be adequately addressed through the Bureau of Prisons and the United States Probation Office.

V. Restitution

Restitution serves the purpose of making a victim whole by restoring to the victim the value of the losses suffered as a result of the defendant's crimes. *See United States v. Newman*, 659 F.3d 1235, 1241 (9th Cir. 2011). The Government recommends the total amount of restitution to be ordered in this case is \$264,909 payable to the IRS.

VI. Conclusion

The United States relies upon the honesty of taxpayers to fund its functions. The Defendant made a deliberate choice to commit fraud and take advantage of the federal tax system. She undermined the U.S. tax authorities and failed to pay \$264,909 in taxes due. These are serious crimes that deserve a serious sentence. For the aforementioned reasons, the United States respectfully recommends that this Court sentence the Defendant to a term of 36 months (the low-end of the applicable Sentencing Guideline range as calculated by the United States), a one-year term of court supervision, a mandatory fee assessment of \$100, and restitution payable to the IRS in the amount of \$264,909.

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1 A sentence of 36 months is appropriate in this case and consistent with the U.S.
2 Sentencing Guidelines and the factors enumerated in 18 U.S.C. § 3553(a).

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4 DATED: May 20, 2020.

5 William D. Hyslop
6 United States Attorney

7 s/ Patrick J. Cashman
8 Patrick J. Cashman
9 Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following, and/or I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant(s):

Roger Peven: rjpeven@gmail.com

s/ Patrick J. Cashman

Patrick J. Cashman

Assistant United States Attorney